IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8569 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAEEMKHAN FAKIR MAHAMMAD PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 8569 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR AD OZA Ld. GP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Surat city on 4.5.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). He was declared as "bootlegger".

The grounds placed on record and as served upon the petitioner reveal that the detaining authority took into consideration four offences registered against the petitioner on 25.3.2002, 5.1.2003, 6.3.2003 and 13.3.2003 under sec. 66(1)(B), 65(E)(A) and 81 of the Bombay Prohibition Act whereby as per the allegations, the petitioner was found in possession of foreign liquor. The detaining authority also took into consideration two in-camera statements as recorded by the sponsoring authority on 21.3.2003 and 22.3.2003 as verified by the detaining authority on 2.5.2003. The first statement revealed the incident took place on 9.10.2002 and second incident is of 20.3.2003. From the above material, the detaining authority has passed the order impugned in this petition.

Heard ld. Advocate Mr. Kamen Shukla for Mr. AS Dave for the petitioner and Mr. Oza ld. GP for the respondents. The affidavit in reply as filed by the detaining authority and placed on record, is also taken into consideration.

Out of various contentions, the matter can be disposed of on the ground whether the activities as revealed from the material could be said to be activities prejudicial to the maintenance of public order. Registration of crimes under the Bombay Prohibition Act as recorded above could hardly be said to be affecting the public order. These are the cases pending before the court on allegation that the petitioner was found in possession of foreign liquor in each case in breach of the provisions of the Bombay Prohibition Act, therefore, these activities of the petitioner cannot be branded as activities prejudicial to the maintenance of public order. The detaining authority, thereafter, also relied upon two in-camera statements recorded by the sponsoring authority, as aforesaid. While going through the statements, it appears that in both the statements as preliminary it is recorded that the petitioner has been indulged in the bootlegging activities of selling illegal liquor and even after filing of the cases against him, he continued his activities. The witness, thereafter, refers to the incident occurred on 9.10.2002 wherein it is alleged that the petitioner at about 12.30PM was passing through Limbayat Police Station area, one person

requested him to hire the rickshaw and to accompany him to the petitioner and his associates. The witness refused and in the meantime, the petitioner and his associates approached the witness and informed him that their rickshaw was punctured and was loaded with the English liquor and directed the witness to deliver the bulk of liquor to Santoshinagar in his rickshaw. On refusing, the witness was beaten by the petitioner and his associates. Though the crowd was gathered and attempted to rescue the petitioner but due to terror and fear created by the petitioner, the crowd was dispersed and the traffic in the area was disturbed. While in the other statement, which is recorded on 22.3.2003, the witness stated that on 20.3.2003 at 11.00AM when he was doing his business, the petitioner and his associates approached him and directed him to keep the English liquor at the business place of the witness because the activities of the petitioner and his associates were revealed before the police. Again, on refusal, the witness was beaten and terror and fear was created by the petitioner and his associates in that area. The question is whether this activity revealed from the statements amounted to prejudicial to the maintenance of public order. It is settled principle of law that the objectional activity of the detenu have to be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. If the society and not only an individual suffers on account of the questionable activities of a person, than those activities are prejudicial to the maintenance of public order and are not merely prejudicial to the maintenance of law and order. It is extent and reach of the objectional activities upon the society is vital aspect for considering the question whether a man has committed only a breach of law and order or has acted in a manner likely to cause disturbance to the public order. Having regard to the facts of this case, when the facts of registration of the crimes against the petitioner cannot be appreciated as objectional activities prejudicial to the public order. The activities revealed from the in-camera statements clearly establishes the individual disputes picked up by the petitioner with the witnesses, if the statements are taken on their face value. It is not revealing through the grounds or through the statements that due to objectional activities of the petitioner large sections of the society was affected and even the tempo of public life was disturbed. At the most these are the incidents can be taken care of by maintenance of law and order. Therefore, there was no material before the detaining authority to reach to subjective

satisfaction that the objectional activities of the petitioner were prejudicial to the maintenance of public order. Therefore, the order impugned in this special civil application is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 4.5.2003 by the Police Commissioner, Surat city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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